



BILLING CODE: 3510-DS-P

DEPARTMENT OF COMMERCE

International Trade Administration

A-570-097 and C-570-098

Polyester Textured Yarn from the People's Republic of China: Preliminary Affirmative Determinations of Critical Circumstances in the Antidumping and Countervailing Duty Investigations

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce

SUMMARY: The Department of Commerce (Commerce) preliminarily determines that critical circumstances exist with respect to all imports of polyester textured yarn (yarn) from the People's Republic of China (China).

DATES: Applicable [Insert date of publication in the *Federal Register*].

FOR FURTHER INFORMATION CONTACT: George Ayache, AD/CVD Operations, Office VIII, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue, NW, Washington, DC 20230; telephone (202) 482-2623.

SUPPLEMENTARY INFORMATION:

Background

On October 18, 2018, Commerce received antidumping duty (AD) and countervailing duty (CVD) petitions concerning imports of yarn from China filed in proper form on behalf of Unifi Manufacturing, Inc. and Nan Ya Plastics Corp. America (the petitioners).¹ On

¹ See the petitioners' letter, "Polyester Textured Yarn from the People's Republic of China and India—Petition for the Imposition of Antidumping and Countervailing Duties," dated October 18, 2018 (Petitions).

November 19, 2018, we published the notices of initiation of the AD and CVD investigations.²

In the AD investigation, Commerce selected Fujian Billion Polymerization Fiber Technology Industrial Co., Ltd. (Fujian Billion), Fujian Zhengqi High Tech Fiber, and Suzhou Shenghong Fiber Co., Ltd. (Suzhou Shenghong) as the respondents for individual examination.³ In the CVD investigation, Commerce selected Fujian Billion, Jiangsu Shenghong Textile Imp & Exp Co., Suzhou Shenghong, and Suzhou Shenghong Garmant Development Co.⁴ On April 2, 2019, the petitioners alleged that critical circumstances exist with respect to imports of yarn from China, pursuant to sections 703(e)(1) and 733(e)(1) of the Tariff Act of 1930, as amended (the Act), and 19 CFR 351.206.⁵

In accordance with 19 CFR 351.206(c)(2)(i), if the petitioner submits an allegation of critical circumstances more than 20 days before the scheduled date of the preliminary determination, Commerce must issue a preliminary finding whether there is a reasonable basis to believe or suspect that critical circumstances exist by no later than the date of the preliminary determination.⁶ In these AD and CVD investigations, the petitioners requested that Commerce issue preliminary critical circumstances determinations on an expedited basis.⁷

Section 703(e)(1) of the Act provides that Commerce, upon receipt of a timely allegation of critical circumstances, will preliminarily determine that critical circumstances exist in CVD investigations if there is a reasonable basis to believe or suspect that: (A) “the alleged

² See *Polyester Textured Yarn from India and the People’s Republic of China: Initiation of Less-Than-Fair-Value Investigations*, 83 FR 58223 (November 19, 2018); see also *Polyester Textured Yarn from India and the People’s Republic of China: Initiation of Countervailing Duty Investigations*, 83 FR 58232 (November 19, 2018).

³ See Memorandum, “Less-Than-Fair-Value Investigation of Polyester Textured Yarn from the People’s Republic of China: Respondent Selection,” dated December 11, 2018.

⁴ See Memorandum, “Countervailing Duty Investigation of Polyester Textured Yarn from the People’s Republic of China: Respondent Selection,” dated December 11, 2018.

⁵ See the petitioners’ letter, “Polyester Textured Yarn from the People’s Republic of China – Petitioners’ Allegation of Critical Circumstances,” dated April 2, 2018 (Critical Circumstances Allegation).

⁶ The preliminary determination for the AD investigation is currently due no later than June 25, 2019, and the preliminary determination for the CVD investigation is currently due no later than April 26, 2019.

⁷ See Critical Circumstances Allegation at 3-5.

countervailable subsidy” is inconsistent with the Subsidies and Countervailing Measures (SCM) Agreement of the World Trade Organization; and (B) there have been massive imports of the subject merchandise over a relatively short period. Section 733(e)(1) of the Act provides that Commerce, upon receipt of a timely allegation of critical circumstances, will preliminarily determine that critical circumstances exist in AD investigations if there is a reasonable basis to believe or suspect that: (A)(i) there is a history of dumping and material injury by reason of dumped imports in the United States or elsewhere of the subject merchandise, or (ii) the person by whom, or for whose account, the merchandise was imported knew or should have known that the exporter was selling the subject merchandise at less than its fair value and that there was likely to be material injury by reason of such sales; and (B) there have been massive imports of the subject merchandise over a relatively short period.

Sections 351.206(h)(2) and (i) of Commerce’s regulations provide that imports must increase by at least 15 percent during the “relatively short period” to be considered “massive” and defines a “relatively short period” as normally being the period beginning on the date the proceeding begins (*i.e.*, the date the petition is filed) and ending at least three months later. Commerce’s regulations also provide, however, that if Commerce finds that importers, or exporters or producers, had reason to believe, at some time prior to the beginning of the proceeding, that a proceeding was likely, Commerce may consider a period of not less than three months from that earlier time.⁸

⁸ See 19 CFR 351.206(i).

Critical Circumstances Analysis

Alleged Countervailable Subsidies are Inconsistent with the SCM Agreement

To determine whether an alleged countervailable subsidy is inconsistent with the SCM Agreement, in accordance with section 703(e)(1)(A) of the Act, Commerce considered the evidence currently on the record of the CVD investigation. Specifically, as reflected in the initiation checklist, the following subsidy programs, alleged in the Petitions and supported by information reasonably available to the petitioners, appear to be either export contingent or contingent upon the use of domestic goods over imported goods, which would render them inconsistent with the SCM Agreement:⁹

- Export Loans from Chinese State-Owned Banks
- Export Seller's Credit
- Export Buyer's Credit
- Export Credit Guarantees
- GOC and Sub-Central Government Subsidies for the Development of Famous Brands and China World Top Brands
- SME International Market Exploration/Development Fund
- Export Assistance Grants
- VAT Refunds for FIEs Purchasing Domestically-Produced Equipment

Therefore, Commerce preliminarily determines that there is a reasonable basis to believe or suspect that alleged subsidies in the CVD investigation are inconsistent with the SCM Agreement.

History of Dumping and Material Injury/Knowledge of Sales Below Fair Value and Material Injury

⁹ See CVD Initiation Checklist: Polyester Textured Yarn from the People's Republic of China, dated November 7, 2018.

To determine whether there is a history of dumping pursuant to section 733(e)(1)(A)(i) of the Act, Commerce generally considers current or previous AD orders on subject merchandise from the country in question in the United States and current orders imposed by other countries regarding imports of the same merchandise. However, in the Critical Circumstances Allegation, the petitioners did not provide information on the history of dumping.¹⁰

To determine whether importers knew or should have known that exporters were selling the subject merchandise at less than fair value pursuant to section 733(e)(1)(A)(ii) of the Act, we typically consider the magnitude of dumping margins, including margins alleged in petitions.¹¹ Commerce has found margins of 15 percent or more (for constructed export price) to 25 percent or more (for export price) to be sufficient for this purpose.¹² The dumping margins of 74.98 percent and 77.15 percent alleged in the AD Petition Supplement significantly exceed the 15 to 25 percent threshold.¹³ Therefore, on that basis, we preliminarily conclude importers knew, or should have known, that exporters in China were selling at less than fair value.

To determine whether importers knew, or should have known, that there was likely to be material injury caused by reason of such imports pursuant section 733(e)(1)(A)(ii) of the Act,

¹⁰ See Critical Circumstances Allegation at 5-7.

¹¹ See, e.g., *Notice of Preliminary Determinations of Critical Circumstances: Certain Cold-Rolled Carbon Steel Flat Products from Australia, the People's Republic of China, India, the Republic of Korea, the Netherlands, and the Russian Federation*, 67 FR 19157, 19158 (April 18, 2002) (unchanged in *Notice of Final Determination of Sales at Less Than Fair Value: Certain Cold-Rolled Carbon Steel Flat Products from Australia*, 67 FR 47509 (July 19, 2002), *Notice of Final Determination of Sales at Less Than Fair Value: Certain Cold-Rolled Carbon Steel Flat Products from the People's Republic of China*, 67 FR 62107 (October 3, 2002), *Notice of Final Determination of Sales at Less Than Fair Value: Certain Cold-Rolled Carbon Steel Flat Products from India*, 67 FR 47518 (July 19, 2002), *Notice of Final Determination of Sales at Less Than Fair Value: Certain Cold-Rolled Carbon Steel Flat Products from Korea*, 67 FR 62124 (October 3, 2002), *Notice of Final Determination of Sales at Less Than Fair Value and Critical Circumstances: Certain Cold-Rolled Carbon Steel Flat Products from The Netherlands*, 67 FR 62112 (October 3, 2002), *Notice of the Final Determination Sales at Less Than Fair Value and Critical Circumstances: Certain Cold-Rolled Carbon Steel Flat Products from the Russian Federation*, 67 FR 62121 (October 3, 2002)).

¹² *Id.*

¹³ See the petitioners' letter, "Polyester Textured Yarn from the People's Republic of China – Petitioners' Supplement for Volume II Regarding China Antidumping Duties," dated October 29, 2018 (AD Petition Supplement), at 7 and Exhibit AD-PRC-Supp-5.

Commerce normally will look to the preliminary injury determination of the International Trade Commission (ITC).¹⁴ If the ITC finds a reasonable indication of material injury to the relevant U.S. industry, Commerce will determine that a reasonable basis exists to impute importer knowledge that material injury is likely by reason of such imports. In these investigations, the ITC found that there is a “reasonable indication” of material injury to the domestic industry because of the imported subject merchandise.¹⁵ Therefore, the ITC’s preliminary injury determination in the AD investigation is sufficient to impute importer knowledge.

Massive Imports

In determining whether there are “massive imports” over a “relatively short period,” pursuant to sections 703(e)(1)(B) and 733(e)(1)(B) of the Act, Commerce normally compares the import volumes of the subject merchandise for at least three months immediately preceding the filing of the petition (*i.e.*, the “base period”) to a comparable period of at least three months following the filing of the petition (*i.e.*, the “comparison period”).¹⁶ Imports will normally be considered massive when imports during the comparison period have increased by 15 percent or more compared to imports during the base period.¹⁷

Accordingly, to determine preliminarily whether there has been a massive surge in imports for each mandatory respondent which provided shipment data, Commerce compared the total volume of shipments from November 2018 through January 2019, the comparison period

¹⁴ See, e.g., *Antidumping and Countervailing Duty Investigations of Certain Softwood Lumber Products from Canada: Preliminary Determinations of Critical Circumstances*, 82 FR 19219, 19220 (April 26, 2017) (*Softwood Lumber from Canada Preliminary Critical Circumstances Determination*), unchanged in *Certain Softwood Lumber Products from Canada: Final Affirmative Determination of Sales at Less Than Fair Value and Affirmative Final Determination of Critical Circumstances*, 82 FR 51806, 51807-08 (November 8, 2017) (*Softwood Lumber from Canada Final AD Determination*).

¹⁵ See *Polyester Textured Yarn from China and India: Investigation Nos. 701–TA–612–613 and 731–1429–1430 (Preliminary)*, 83 FR 63532 (December 10, 2018).

¹⁶ See *Softwood Lumber from Canada Preliminary Critical Circumstances Determination*, 82 FR at 19220, unchanged in *Softwood Lumber from Canada Final AD Determination*, 82 FR at 51807-08.

¹⁷ *Id.*

(i.e., all months for which shipment data was available), with the preceding three-month period of August 2018 through October 2018, the base period. Regarding the CVD investigation, for “all others,” Commerce compared Global Trade Atlas (GTA) data for the period November 2018 through January 2019 with the preceding three-month period of August 2018 through October 2018,¹⁸ after subtracting from the GTA data shipments reported by the mandatory respondents which provided such data. Similarly, regarding the AD investigation, for non-individually examined companies requesting separate rate status, we performed the same comparison. For those mandatory respondents in either the CVD or AD investigation that are not participating in the investigation, we preliminarily determine, on the basis of adverse facts available,¹⁹ that there has been a massive surge in imports. Accordingly, based on our analysis of information on the record, we preliminarily determine that all producers/exporters of yarn from China had massive surges in imports.²⁰

Based on the criteria and findings discussed above, we preliminarily determine in both the AD and CVD investigations that critical circumstances exist with respect to all imports of yarn from China.

Final Critical Circumstances Determination

We will issue our final determinations concerning critical circumstances when we issue our final CVD and AD determinations. All interested parties will have the opportunity to address this determination in case briefs to be submitted after the completion of the preliminary CVD and AD determinations by a deadline to be established at a later date.

¹⁸ Commerce gathered GTA data under the following harmonized tariff schedule numbers: 5402.33.3000 and 5402.33.6000.

¹⁹ See section 776 of the Act.

²⁰ See Memorandum, “Polyester Textured Yarn from the People’s Republic of China: Preliminary Critical Circumstances Calculation,” dated concurrently with this notice.

ITC Notification

In accordance with sections 703(f) and 733(f) of the Act, we will notify the ITC of these preliminary determinations of critical circumstances.

Suspension of Liquidation

In accordance with section 703(e)(2) of the Act, because we have preliminarily found that critical circumstances exist with regard to imports from all producers and exporters of yarn from China, if we make an affirmative preliminary determination that countervailable subsidies have been provided to these same producers/exporters at above *de minimis* rates, we will instruct U.S. Customs and Border Protection (CBP) to suspend liquidation of all entries of subject merchandise from these producers/exporters that are entered, or withdrawn from warehouse for consumption, on or after the date that is 90 days prior to the effective date of “provisional measures” (*e.g.*, the date of publication in the *Federal Register* of the notice of an affirmative preliminary determination that countervailable subsidies have been provided at above *de minimis* rates). At such time, we will also instruct CBP to require a cash deposit equal to the estimated preliminary subsidy rates reflected in the preliminary determination published in the *Federal Register*. The suspension of liquidation will remain in effect until further notice.

In accordance with section 733(e)(2) of the Act, because we have preliminarily found that critical circumstances exist with regard to imports from all producers and exporters of yarn from China, if we make an affirmative preliminary determination that sales at less than fair value have been made by these same producers/exporters at above *de minimis* rates, we will instruct CBP to suspend liquidation of all entries of subject merchandise from these producers/exporters that are entered, or withdrawn from warehouse, for consumption on or after the date that is 90 days prior to the effective date of “provisional measures” (*e.g.*, the date of publication in the *Federal*

Register of the notice of an affirmative preliminary determination of sales at LTFV at above *de minimis* rates). At such time, we will also instruct CBP to require a cash deposit equal to the estimated preliminary dumping margins reflected in the preliminary determination published in the *Federal Register*. The suspension of liquidation will remain in effect until further notice.

These determinations are issued and published pursuant to section 777(i)(1) of the Act and 19 CFR 351.206(c)(2).

Jeffrey I. Kessler
Assistant Secretary
for Enforcement and Compliance

April 18, 2019

Date
[FR Doc. 2019-08275 Filed: 4/22/2019 8:45 am; Publication Date: 4/23/2019]